

## MEMORANDUM OF LAW

DATE: January 31, 1996

TO: John Barlow, Council Representative, District 1

FROM: City Attorney

SUBJECT: Kaye Project - Legal Issues

As you know, both the applicant for the Kaye project and the opposing neighbors have raised various legal issues regarding the City's options in connection with approving or disapproving construction of two single family houses on two lots in La Jolla. You asked me to prepare a brief summary of my conclusions with regard to the various legal issues.

The first basic issue involves whether or not the applicant in fact has two legal lots. The record appears clear that two separate legal lots have existed for a number of years.

The second issue is whether or not the lot line adjustment which occurred in April 1995, and resulted in a reconfiguration of the two lots, constituted a legal lot line adjustment. The opponents feel that the lot line adjustment should have been the subject of a discretionary coastal development permit when, in fact, it was handled administratively as a ministerial permit.

In the case of *San Dieguito Partners v. City of San Diego*, the California Court of Appeal held that lot line adjustments are, in fact, ministerial (see attached). Basically, both the State Subdivision Map Act and the City's Municipal Code section 102.0207 limit the review of lot line adjustments to a determination of whether the lots meet the minimum requirements of the planning and zoning regulations in regard to lot frontage, depth and area.

I have been informed that a determination of conformance to those requirements was made by City staff at the time of the lot line adjustment review. A seeming anomaly which exists in our fact situation is that the La Jolla Shores Planned District Ordinance does not have specific "frontage, depth and area" regulations. In the Kaye situation, the two legal lots, prior to the lot line adjustment, were approximately 8,875 square feet and 6,325 square feet respectively, and subsequent to the lot line adjustment the two lots were approximately 8,400 square feet and 6,800 square feet respectively. Therefore, neither before nor after the lot line adjustment were either of the lots equal in size to the average size of lots within 300 feet. However, the 300-foot lot

size provision, as noted below, pertains only at the time lots are subdivided and therefore a finding was made that a lot line adjustment met code requirements. Therefore, my conclusion is that the lot line adjustment was legally done through a ministerial action.

The next issue raised by the opponents concerns the application of San Diego Municipal Code section 103.0304.1 in connection with approval of the Kaye lot line adjustment. Section 103.0304.1 generally provides that any lot to be developed within the La Jolla Shores Planned District be equal in size to the average lot size within 300 feet.

After discussing the historical application of this Municipal Code provision with City staff and researching the legislative intent behind its adoption, my conclusion is that Municipal Code section 103.0304.1 applies only to the subdivision of land - the creation of new lots. Government Code section 66412 and the case law interpreting it clearly states that a lot line adjustment does not constitute a subdivision of land within the meaning of the Subdivision Map Act. The Kaye lot line adjustment did not create any new or additional lots. The project applicant owned two adjacent lots before the lot line adjustment and two adjacent lots after the lot line adjustment. Therefore, we believe that City staff was correct in signing off on the parcel map and in doing so implicitly finding pursuant to Municipal Code section 102.0207 that the minimum requirements of the La Jolla Shores Planned District Ordinance were satisfied.

The applicant has also raised legal issues, including a contention that the California Statutory Permit Streamlining Act requires action to either grant or deny a proposed project within a specific time frame, and that the City has not complied with such time requirements and that, therefore, the proposed project should be deemed approved.

Our conclusion is that the City has acted reasonably and expeditiously and that any delays in processing have been largely the result of failure by the applicant to provide needed information to complete the processing. Also, the environmental and coastal development permit issues require public hearing and due process and cannot legally be "deemed" approved without providing a public hearing.

The applicant has also taken a position that the decisionmaker, with regard to the proposed two houses on the two individual lots, cannot, in reviewing the findings to be made in granting or denying such discretionary approvals, limit the size of the houses as a condition to approval. Our conclusion is that the decisionmaker can impose whatever reasonable conditions it feels necessary in order to make the required findings, and, if the size of the structures is considered a necessary factor in being able to make the required findings, that reasonable restrictions on structure size may be imposed.

The above discussion is necessarily a simplistic statement of the various legal issues which have been raised. If you want a more

detailed discussion of any of the particular issues, please contact me. In addition, it is my observation that it may be appropriate to consider amending the La Jolla Shores Planned District Ordinance to clarify some of the ambiguities which exist. My understanding is that the local community planning group took a very active part in drafting the existing ordinance and that our subsequent attempts to interpret the ordinance may indicate a need for some clarifications to best accommodate, in a legal manner, the goals of the community.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Chief Deputy City Attorney

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Attachment

ML-96-6